



**National Rural Electric
Cooperative Association**

A Touchstone Energy* Cooperative

February 26, 2010

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: National Rural Electric Cooperative Association ("NRECA") Notice of Ex Parte
Presentation, GN Docket Nos. 09-47, 09-51, 09-137 and WC Docket No. 07-245.

Dear Ms. Dortch:

Pursuant to Section 1.1206 of the Commission's rules, this ex parte notice is filed on behalf of NRECA. On February 26, 2010, David Predmore, NRECA Corporate Counsel, Tracey Steiner, NRECA Senior Corporate Counsel, Laura Marshall Schepis, NRECA Government Relations Deputy Director and Counsel, and Gloria Tristani, Spiegel & McDiarmid LLP, outside counsel to NRECA, met with Priya Aiyar, Chairman Genachowski's Legal Advisor for Wireline Competition and International Issues.

During the meeting, participants discussed barriers to broadband deployment in sparsely populated areas and the public policy rationale for maintaining the cooperative exemption from the FCC's pole attachment jurisdiction. The parties discussed information provided in the attached handouts and comments previously filed in the above referenced proceedings.

A copy of this letter and the handouts presented during the meeting are being filed via ECFS with your office. Please do not hesitate to contact me if you have any questions.

Sincerely,

A handwritten signature in blue ink, appearing to read "David Predmore", is written over the word "Sincerely,".

David Predmore

cc: Priya Aiyar

Attachments

BASIC FACTS ABOUT ELECTRIC COOPERATIVES & POLES

Electric cooperatives cover a vast territory with few consumers.

- 864 electric distribution cooperatives
- Serve 42 million consumers in 47 states
- Median number of consumers per cooperative is 12,500
- Own and operate 2.5 million miles of distribution line and roughly **42 million poles, of which about 25% have some type of communications attachment**¹
- Average \$4,472 in distribution plant costs per consumer²

Cooperative attachment rates are designed to recover actual costs associated with providing attachment space on poles.

- The majority of cooperatives are exempt from federal income tax, which requires “operation at cost” (no profits) and “equitable allocation” (no cross-subsidization).³
- The cost of poles is rising. The average cost of a bare 30 or 35 foot wood pole (not including supports, labor, shipping, etc.) costs in excess of \$200. Annual costs associated with maintaining a pole exceed \$100.⁴
- Taller poles are needed to accommodate attachments.
- In a 2003 study, NRECA found the average fee that cooperatives charged was \$10, which remains in line with more recent analyses done at the state level.⁵
- In many instances, cooperatives are not even recovering all their costs.⁶

¹ 2003 NRECA data.

² NRECA calculated median average for poles, line, towers, meters and transformers.

³ See NRECA comments submitted in response to FCC Notice of Proposed Rulemaking regarding the Rules and Policies Governing Pole Attachments, WC Docket No. 07-245 at 6 (Filed April 22, 2009).

⁴ See, e.g., *Analysis of Pole Attachment Rate Issues in Tennessee* (Mar. 2007) (finding the average a weighted mean pole cost of \$ 308.16 per pole and an weighted annual mean cost of \$102.22 per pole in 2005/2006 and cooperative CATV pole attachment average rate of \$11.63, with rising rates tracking rising pole costs), available at: http://www.tennessee.gov/tacir/PDF_FILES/Other_Issues/pole%20attachment%20rate%20issues.pdf.

⁵ Id.

⁶ According to NRECA research conducted in 2003, 51% of co-ops were not being reimbursed for costs associated with inventorying and inspecting attachments, 39% were not being reimbursed for costs to move attachments to a relocated or replaced pole, and 28% were not being reimbursed for costs to remove unsafe, unauthorized or abandoned attachments.

LEGISLATIVE HISTORY OF THE POLE ATTACHMENT STATUTE & THE EXEMPTION FOR MUNICIPALS, COOPERATIVES & RAILROADS

On February 21, 1978, Congress enacted the Communications Act Amendments of 1978 amending the 1934 Act to “provide for the regulation of utility pole attachments.” Senate Bill 1547 was the predecessor to the 1978 Act.

Congress favored State and local pole attachment regulation, and therefore limited the FCC’s authority over pole attachments.

“This expansion of FCC regulatory authority is strictly circumscribed and extends only so far as is necessary to permit the Commission to involve itself in arrangements affecting the provision of utility pole communications space to CATV systems. **Even in this instance S. 1547 ... does not contemplate a continuing direct involvement by the Commission in all CATV pole attachment agreements,**” but involvement “only” when a utility or cable television system “invokes the powers conferred by S. 1547 ... to hear and resolve complaints.”¹

“The basic design of S. 1547, as reported, is to empower the [FCC] to exercise regulatory oversight over the arrangements between utilities and CATV systems in any case where the parties themselves are unable to reach a mutually satisfactory arrangement and where a state or more local regulatory forum is unavailable for resolution of disputes.... S. 1547, as reported, accomplishes this design in the most direct and least intrusive manner.”²

The Committee considers the matter of CATV pole attachments to be essentially local in nature, and that **the various state and local regulatory bodies** which regulate other practices of telephone and electric utilities **are better equipped to regulate CATV pole attachments.... It is only because such state or local regulation currently does not widely exist that federal supplemental regulation is justified.**³

Congress exempted cooperatives and municipals from Federal pole attachment regulation for valid policy reasons.

“Because the **pole rates charged by municipally owned and cooperative utilities are already subject to a decision making process based upon constituent needs and interests,** S. 1547, as reported, exempts these utilities from F.C.C. regulation. Presently **cooperative utilities charge the lowest pole rates to CATV pole users. CATV industry representatives indicate only a few instances where municipally owned utilities are charging unsatisfactorily**

¹ S. Rep. No. 95-580, at 15 (1977), reprinted in 1978 U.S.C.C.A.N. 109, 123.

² Id.

³ 1978 U.S.C.C.A.N. 109, 124-125, S. Rep. No. 95-580, at 16-17. At the time, only Connecticut regulated pole attachments.) 1978 U.S.C.C.A.N. 109, 122, S. Rep. at 14.

high pole rental fees. These rates presumably reflect what local authorities and managers of customer-owned cooperatives regard as equitable distribution of pole costs between utilities and cable television systems.”⁴

“Cooperatively owned utilities, by and large, are located in rural areas where often over-the-air television service is poor. Thus the customers of these utilities have an added incentive to foster the growth of cable television in their areas. Many stockholders of power or electric cooperatives also subscribe to cable television systems.”⁵

CURRENT LANDSCAPE

CATV is no longer a fledgling industry.

- CATV now boasts 92% of homes passed with high speed internet availability and 125.7 million homes with cable video service.⁶

20 States and the District of Columbia now regulate pole attachments.

Congress has repeatedly decided not to change the exemption. Why?

- Co-op & municipal attachment rates are cost-based and fairly negotiated.
- Claims that access is being denied or rates are excessive are grossly overstated. A handful of “outliers” does not justify subjecting nearly 3,000 entities to costly and unnecessary regulation.⁷
- The same incentives still exist to keep attachment rates as low as possible (while ensuring cost recovery): to encourage deployment of advanced services.
- Cooperative board members and municipal utility board members/city council members are still answerable to the consumers in their communities that elect them.
- Co-ops and municipals know that if even one entity in the state is perceived as having rates that are too high or being too slow to grant access, they run the risk of state CATV lobby seeking to expand regulation.⁸

⁴ Id. U.S.C.A.N.N. at 126 and S. Rep. at 18.

⁵ Id.

⁶ Statistics as reported on www.NCTA.com.

⁷ See NRECA comments submitted in response to FCC Notice of Proposed Rulemaking regarding the Rules and Policies Governing Pole Attachments, WC Docket No. 07-245 (Filed April 22, 2009) and NRECA reply comments submitted in response to FCC Notice in the Matter of A National Broadband Plan for Our Future, WC Docket No. 09-51, at 5 (Filed July 21, 2009).

⁸ Recent examples include: Arkansas, Georgia, North Carolina, Ohio, Tennessee, Texas and Virginia.

REVOKING THE EXEMPTION WILL NOT RESOLVE THE REAL BARRIERS TO BROADBAND DEPLOYMENT

Barrier #1 Low customer density –not high pole rates– hinders rural and remote area deployment.

- Cooperatives average just 7 consumers per mile of distribution line.

Barrier #2 Revenue is simply insufficient for many for-profit, wireline-based providers to make the business case to extend to rural and remote areas.

- This issue is not unique to broadband deployment.
- Electric and telephone cooperatives are able to serve sparsely populated rural areas because they: (1) do not need to earn a profit, (2) have access to low-cost financing, and (3) are exempt from federal income tax.¹

WHAT IS NEEDED ARE REAL SOLUTIONS

Solution #1 If a subsidy is needed to advance federal broadband policy, then a reformed Universal Service Fund is a more appropriate vehicle.

- The FCC's High-Cost Program should be amended to support the provision of broadband in those areas that remain insufficiently profitable for commercial providers.²

Solution # 2 Make it possible for cooperatives and municipals that want to provide broadband services but cannot due to state prohibitions or restrictions law by preempting such states.

- The FCC already has this authority:
(a) In general. *No State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service. . .*

¹ The exemption is not automatic. Tax exempt cooperatives must satisfy the Internal Revenue Services' cooperation operation principles and annually demonstrate that at least 85 percent of income comes from serving members as required by Internal Revenue code section 501(c)(12). *See e.g., Puget Sound Plywood, Inc. v. Commissioner*, 44 T.C. 305 (1965) ("the core of economic cooperative theory: (1) subordination of capital, (2) democratic control, and (3) *operation at cost*.").

² *See* NRECA comments, In re A National Broadband Plan for Our Future, GN Docket No. 09-51 (filed June 9, 2009) at 9.

(d) Preemption. If, after notice and an opportunity for public comment, the Commission determines that a State or local government has permitted or imposed any statute, regulation, or legal requirement that violates subsection (a) or (b), ***the Commission shall preempt the enforcement of such statute, regulation, or legal requirement to the extent necessary to correct such violation or inconsistency.***³

³ 47 U.S.C. § 253.

ELECTRIC COOPERATIVES

AMERICA'S MEMBER OWNED UTILITIES

What is an ELECTRIC COOPERATIVE?

Electric cooperatives are private, not-for-profit businesses governed by their consumers (known as “member-owners”). Two federal requirements for all co-ops, including electric co-ops, are democratic governance and operation at cost. Specifically, every member-owner can vote to choose local boards that oversee the co-op, and the co-op must, with few exceptions, return to member-owners revenue above what is needed for operation. Under this structure, electric co-ops provide economic benefits to their local communities.



The majority of co-ops distribute electricity to consumers through low-voltage residential lines that cover over 75 percent of the nation's land mass. Many of these “distribution co-ops” have joined to create co-ops that provide them with generation and transmission services (“G&T” co-ops). Distribution co-ops also buy power from investor-owned utilities (IOUs), public power systems, federal hydropower Power Marketing Administrations (PMAs), and the Tennessee Valley Authority (TVA).

THE DAWN OF RURAL ELECTRIFICATION

In 1935, about 90 percent of the rural farms and communities in America had no electricity. To bring electricity to everyone, President Franklin D. Roosevelt created, by executive order, the Rural Electrification Administration (REA). Farm communities across the country tapped financing from the REA and adapted the private co-op business model to deliver electricity in their communities.

COOPERATIVES IN PERSPECTIVE

Many co-ops rely on the successor to REA, the Rural Utilities Service (RUS), a branch of the U.S. Department of Agriculture, to provide electric co-ops loans at the government's cost of money plus an administration fee. These low-interest loans are essential because not-for-profit electric co-ops cannot use federal tax subsidies available to for-profit companies. Further, electric co-ops collect an average of only \$10,565 of revenue per mile of distribution line, compared with IOUs that collect an average of \$62,665 per mile of line and public power systems that collect \$86,302 per mile.



The National Rural Electric Cooperative Association is the national service organization representing the interests of cooperative electric utilities and their consumers. In addition to advocating consensus views on legislative and regulatory issues, NRECA aggregates health care, pension and many other programs for its members.



Today, 930 electric co-ops serve 42 million consumers in 47 states. Electric co-ops serve an average of 7 customers per mile, compared with 35 customers per mile served by IOUs and 47 customers per mile served by public power systems. Electric co-ops bring electricity to only 12 percent of the population, but maintain 42 percent of the nation's electricity distribution lines.



THE ELECTRIC COOPERATIVE DIFFERENCE

The co-op business model keeps the focus on the member-owner and local community. Electric co-ops are involved in community development and revitalization projects, such as small business development and job creation, improvement of water and sewer systems, and assistance in health care and education services. Local ownership and the accountability it demands is one reason that electric co-ops enjoy the highest average customer satisfaction rating in the industry, according to the University of Michigan's American Customer Satisfaction Index.

THE FUTURE OF ELECTRIC COOPERATIVES

The private, member-owned co-op business model has been a foundation for growth in many communities. To keep pace with this growth, electric co-ops, like all segments of the utility industry, must now plan for a significant amount of new generation capacity. The growing consumer base will continue to depend upon coal, nuclear, and gas generation, with a supporting role increasingly played by renewable energy resources and efficiency measures. As such, electric co-ops lead the way in developing new, cleaner coal plants along with alternatives to fossil fuels.

Renewable energy makes up almost 11 percent of the electricity provided by electric co-ops, with more than 120 megawatts from non-hydroelectric renewable generation owned by the co-ops themselves and more than 500,000 megawatt hours purchased from renewable developers. Almost 90 percent of the co-op industry offers their consumers power from renewable energy. And, using the Clean Renewable Energy Bond (CREB) program, co-ops are constructing a significant number of new co-op-owned renewable generation projects.

THE ELECTRIC COOPERATIVE SUCCESS STORY

Many consumers are active politically in their co-op and with their state and federal lawmakers. The core values that inspired farmers to bring electricity to rural America in the 1930s remain in today's electric co-op communities. In addition to providing superior service, electric co-ops play a vital role in economic development and carrying on the tradition of civic responsibility and local democracy.

For more information call 703.907.5500 or visit www.nreca.coop



February 22, 2010 e-mail response to Mr.Koutsky

In 2003, 371 cooperatives responded to a survey of 864 distribution co-ops (42% of our members). The respondents were statistically representative of our total membership based on location, # of consumers, and growth rate. 75% of the respondents reported having telephone attachments, 72% cable TV, 8% ISPs, 20% "Other" (includes street lights, traffic signals, signs, etc.) and 4% were co-op subsidiaries. Average number of attachments per co-op: 8,534 telephone attachments; 5,855 CATV attachments; and 1,254 ISP attachments.

Average annual fee charged by respondents: \$10 per pole or per attachment. Respondents were asked for rates in effect as of June 1, 2002. We did not ask if attachments were charged "by the foot." Twice as many co-ops reported charging on a "per pole" basis as those charging "per attachment". Some co-ops charge different rates for different types of attachments, while others charge the same rate regardless of the type of attachment. Among co-ops that charge the same annual rate for all types of attachments, 55% reported an annual charge of between \$5 and \$10 per attachment or per pole. Overall average fee was \$9.38 (per pole) and \$10.07 (per attachment). For co-ops that charge different rates for different types of attachments, telephone attachment rates averaged between \$2.67 and \$3.50 more than the CATV rates.

Regarding cost reimbursement, we found that a minority of co-ops were including attachment-related expenses in the annual rental fee. Most either were not being reimbursed at all or were separately charging for those expenses:

Attachment-related expense	Include in annual fee	Separate charge	Not reimbursed
Correction of unsafe Attachments	8%	77%	15%
Make-ready costs	13%	73%	14%
Removal of unsafe, unauthorized or abandoned attachments	8%	64%	28%
Transferring attachments when pole replaced or relocated	14%	47%	39%
Inventorying attachments	28%	21%	51%
Inspecting attachments	30%	19%	51%

We also asked about issues encountered with attaching entities. Of the problems experienced: 86% reported unauthorized attachments, 67% unsafe attachments, and 45% late or incomplete payments. Larger co-ops (which tend to have significantly more attachments than the smallest co-ops) were the most likely to report safety-related accidents resulting in personal injuries and/or property damage. For co-ops with 20,001 to 50,000 meters: 12% reported personal injury accidents and 48% property damage incidents and for those co-ops with > 50,000 meters: 23% reported personal injury accidents and 50% property damage incidents.